


# TECHNICAL MEMORANDUM

## Utah Coal Regulatory Program

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April 12, 2011

TO: Internal File

FROM: Joe Helfrich, Team Lead, Admin review 

RE: Permit Application – Kinney #2 Mine, Carbon Resources, LLC, Carbon County, C/007/047, Task ID #3779, Internal File

### SUMMARY:

The Kinney #2 Mine plan application was received on February 19, 2008 (2008/Incoming/0002.pdf) with supplemental information received on June 13, 2008 (2008/Incoming/0004.pdf). The mine plan application was determined to be administratively complete on June 24, 2008 (2008/Outgoing/0005.pdf). The Division notified local, state, and federal governing agencies on June 25, 2008 (2008/Outgoing/0006.pdf). Val Payne, John Harja and Mike Mower of the Public Lands Policy Coordination Office (PLPCO) were included in the distribution. Carbon Resources, LLC provided public notice for the proposed mine on June 24, July 1, 8 and 15, 2008 in the Sun Advocate. In response to the public notice, the Division received one comment from the Center for Water Advocacy (2008/Incoming/0006.pdf). The commenter requested an informal conference. That conference is scheduled for September 30, 2008 at the Price Field Office. Email notification of the informal conference was sent to the Scofield Mayor, Carbon County Commissioners, the Price River Watershed Conservation District, Scofield Special Service District, MSHA's Price Office, and Utah State Parks.

The technical review noting deficiencies was provided to the applicant on September 24, 2008. After two years of retooling, the application was resubmitted on October 4, 2010. The application was determined to be deficient on January 27<sup>th</sup> 2011. The Division received a response to the noted deficiencies on March 21<sup>st</sup> 2011.

The Division has one year to review the application and either write findings in support of permit issuance or in explanation of permit denial. As of this date, the application is not recommended for approval. The following deficiencies were noted with the application:

Lead assignments now include a review of the administrative section of the application. This memo will reflect a review of the applicants response to the deficiencies noted in the first review completed by Priscilla Burton, Division soils scientist. Joe Helfrich, division biologist,

will add text to this document based on the information submitted by the applicant on October 4, 2010 and March 21<sup>st</sup> 2011.

**Summary of Deficiencies:**

**R645-301-112**, The Application needs to include a copy of the proof of current registration with the Utah Department of Commerce and a reference in the narrative noting its location, (Chapter 1 page 1-9). This deficiency was previously noted. [JCH]

**R645-300-141**, Numerous errors in the legal description were noted in Section **645 301-114.100**, for the permit area portion of the lease and these must be verified. [PB]

**R645-300-141, 301-114.100**, the reviewer is referred to pages 1-18 and 1-19, R645 301-114.100, (Documentation of Ownership). They include legal descriptions of the Fee surface and Leased surface boundaries. Page 1-20 includes a legal description of the of the permit boundary. The text on pages 1-18 and 1-19 of the application include a reference to lease area and permit area boundary maps 11 and 12. However the maps are not to a scale of 1"=1000' that clearly show the boundaries of the lease and permit areas in order to verify the legal description as previously noted in consultation with the applicant. [JCH]

**R645-301-112.800**, Map 12, Coal Regional Ownership Map, mis-represents the coal ownership by Carbon Resources, LLC, according to the legal description in Section **R645 301-114.100, (Documentation of Ownership)**. The legal description provided in Section **R645 301-114.100**, is for a much larger area than the 452.5 acre permit area shown on Map 12. [PB]

**R645-301-121.200**, the disturbed area boundary is noted in the legends of Maps 13 and 14. The entire boundary needs to be accurately and clearly shown on Maps 13 and 14 as depicted in the corresponding legends. [JCH]

**R645-300-132; R645-301-113**, The entity ID numbers for Carbon Resources, LLC, Western Reserve Coal Company, Inc. and WRCC, LLC were located in the confidential file. This information noted on pages 1-10 and 1-11 is not confidential and needs to be included in the application. [JCH]

**TECHNICAL ANALYSIS:**

**GENERAL CONTENTS**

**IDENTIFICATION OF INTERESTS**

Regulatory Reference: 30 CFR 773.22; 30 CFR 778.13; R645-301-112

**Analysis:**

The applicant has met the requirements to provide ownership and control information for the operation and surface lands affected in Chapter 1, Section 112. The applicant and operator is Carbon Resources, LLC, a limited liability company. The company was registered with the Utah Department of Commerce, but this registration expired on November 17, 2007 (<https://secure.utah.gov/bes/action>). *According to the text on page 1-9 the corporate registration with the Utah Division of Commerce was renewed on 01/24/2011. Volume 2 Exhibit 4 does not include a copy of the current registration as stated in the guidance document nor does the text on page 1-9 include a reference where the proof of current registration can be located. Furthermore the guidance document fails to note text changes made on page 1-9 regarding the renewal of the registration. The renewal lapsed on 12/01/2010. [JCH]*

Carbon Resources, LLC corporate office is in Albuquerque, New Mexico. The telephone number and address is provided. Chapter 1, pages 1-10 and 11 include all company officers' names and addresses and telephone numbers along with their employer identification numbers and % ownership.

Ronald C. Barker is the resident agent and is responsible for paying the Abandoned Mined Land royalty fee.

Surface and coal ownership are displayed on Maps 11 and 12, respectively. Section 645-301-112.500 provides the names and addresses of the permit area surface owners. The permit area surface is owned by two parties: Carbon Resources LLC and the Evangelos George Telonis Trust, administered by Nick Sampinos. The Telonis surface has been leased to the applicant (Section 645-301-114.100 provides the Carbon County Recorder's book and page number).

Section 2.1.2.4 provides the name and addresses of the owners of the coal to be mined. Within the permit area, the coal is owned by Carbon County, Carbon Resources LLC and by Peabody Natural Resources. The coal to be mined was subleased from Carbon County through

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Western Reserve Coal Inc. and through WRCC, LLC to Carbon Resource LLC (Section 645-301-114.100 provides the Carbon County Recorder's book and page number).

Adjacent surface and subsurface ownership is also shown on Maps 11 and 12. The legal description provided in Section 645-301-114.100 indicates that coal leases subleased by Carbon Resources, LLC are on the west side of Scofield Reservoir (T 12 S., R. 6 E. Sec 24, 25, and 36). Only a portion of the lease description in Sec. 645-301-114.100 is within the permit area. Federal and fee coal is adjacent. An interest in adjacent coal is described in Section 4.5.2.2. (See related request for information under Legal Description deficiencies R645-301-112.800 and R645-300-141.)

Chapter 1, Page 1-16, Section 112.700 includes a commitment to obtain the necessary MSHA number(s) for the mine at the time of permit issuance. Include this as a permit condition. [JCH]

### Findings:

The information provided does not meet the requirements of the Regulations for Identification of Interests. Prior to approval, the following information must be provided, in accordance with:

**R645-301-112**, The Application needs to include a copy of the proof of current registration with the Utah Department of Commerce and a reference in the narrative noting its location, (Chapter 1 page 1-9). This deficiency was previously noted. [JCH]

## VIOLATION INFORMATION

Regulatory Reference: 30 CFR 773.15(b); 30 CFR 773.23; 30 CFR 778.14; R645-300-132; R645-301-113

### Analysis:

Sections 2.1.2.3 and 2.1.2.4 of the application state that there are no violations, suspensions, revocations, or forfeitures on record for Carbon Resources, LLC or its affiliates.

The Division can not complete a check of the Applicant Violator System without the corporate identification numbers for and Carbon Resources, LLC. The ID numbers for Carbon Resources, LLC, Western Reserve Coal Company, Inc. and WRCC, LLC. were located in the confidential file. This information is not confidential and must be included in the application.

**Findings:**

The applicant has not met the requirements of the Rules for Violation Information. Prior to approval, the following information must be provided, in accordance with:

**R645-300-132; R645-301-113**, The entity ID numbers for Carbon Resources, LLC, Western Reserve Coal Company, Inc. and WRCC, LLC. were located in the confidential file. This information noted on pages 1-10 and 1-11 is not confidential and should be included in the application. [JCH]

**RIGHT OF ENTRY**

Regulatory Reference: 30 CFR 778.15; R645-301-114

**Analysis:**

The permit area surface is owned by two parties: Carbon Resources LLC (15.3 acres) and the Evangelos George Telonis Trust, administered by Nick Sampinos (437.2 acres) as described in Section 2.1.2. The applicant has surface right of entry to 38.1 acres as described in Sec. 2.1.5.1. Approximately twenty three acres (22.88 acres) of the Telonis surface has been leased to the applicant (Section 2.1.5.1 provides the Carbon County Recorder's book and page number).

The applicant also has underground right of entry to coal in T. 12 S., R. 6 E. ; T. 12 S., R. 7 E.; T 13 S., R. 6 E.; and T. 13 S., R. 7 E. Salt Lake Meridian (Sec. 2.1.5.1). Only a portion of the lease description in Sec.2.1.5.1 is within the 452.5 acre permit area.

**Findings:**

The information provided meets the requirements of the Regulations for Right of Entry.

**LEGAL DESCRIPTION AND STATUS OF UNSUITABILITY CLAIMS**

Regulatory Reference: 30 CFR 778.16; 30 CFR 779.12(a); 30 CFR 779.24(a)(b)(c); R645-300-121.120; R645-301-112.800; R645-300-141; R645-301-115.

**Analysis:**

Public Lands Policy Coordinating Office (PLPCO) and State Historic Preservation Office (SHPO) were notified of the administrative completeness on June 25, 2008 (2008/Outgoing/0006.pdf).

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The application provides a legal description for the coal leases acquired by Carbon Resources, LLC, but not the permit area in Sec. 2.1.5.1. The legal description provided in Section 2.1.5.1 is for a much larger area than the 452.5 acre permit area shown on Map 4.5.1.2-2, Coal Regional Ownership Map. Map 12 mis-represents the coal ownership by Carbon Resources, LLC, according to the legal description in Section 2.1.5.1. All adjacent coal leases are shown on Map 4.5.1.2-2. In addition, Map 4.5.1.2-2 designates the separation between R. 6 E. and R. 7 E. Numerous errors in the legal description were noted in Section 2.1.5.1 for the permit area portion of the lease and these must be verified.

The reviewer is referred to pages 1-18 and 1-19, R645 301-114.100, (Documentation of Ownership). They include legal descriptions of the Fee surface and Leased surface boundaries. Page 1-20 includes a legal description of the of the permit boundary. The text on pages 1-18 and 19 of the application include a reference to a lease area and permit area boundary maps 11 and 12. However the maps are not to a scale of 1"=1000' that clearly show the boundaries of the lease and permit areas in order to verify the legal description. [JCH]

The Regional Coal ownership is accurately described on Map 12 and in the text on page 1-19. Ranges 6 and 7 east have been added to the map.

The land within the proposed permit area is all privately owned surface. A public road runs within 100 ft of the permit area, State Route 96. Operations within 100 feet of a public road, require a hearing in accordance with UAC Section 40-10-24-(4)(c), and a written finding must be made, that the interests of the public and the landowners affected will be protected. The Applicant states that they have obtained approval for access to SR 96, from the County.

Chapter 5, Page 5-37, Section 526.116.1 has been revised to include a commitment to provide UDOT approval prior to any highway work. [JCH] Include this as a stip to the permit.

There is one occupied dwelling within 300 feet of the proposed mining operations. Volume 2 exhibit 4 contains a written waiver from Jim Levanger, President of L2H Enterprises Inc. The reference to the information contained in Exhibit 4 is provided for in Volume 1, Chapter 1; page 1-20 Section R645-301-115.300.

UCA Section 40-10-24(1)(a) restates SMCRA Section 522(a)(4) and 522(a)(5) which requires that on non-federal lands, the board and the division have an obligation to establish a planning process enabling objective decisions based upon competent and scientifically sound data and information as to which, if any, lands in the State are unsuitable for mining. Such determinations should be integrated with the land use planning processes at the local and state and federal levels. UAC Section 40-10-24(1)(c) describes the unsuitability criteria that must be balanced against the economic impact in a cost-benefit analysis. They include incompatibility with current land use plans; the affect on fragile or historic and cultural lands; the affect on

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aesthetic values and natural systems; the affect on renewable resource lands, in particular the water supply and aquifer recharge; and areas subject to flooding or unstable geology.

UCA Section 40-10-24(4) places prohibitions on mining in National Parks, designated Wild and Scenic Rivers, National Recreation Areas etc. Pertinent to this proposal is UAC, Section 40-10-24(4)(b) which prohibits adverse effects on historic sites unless approved jointly by the division and state or local agency with jurisdiction over the historic site.

Lands to be disturbed by coal mining and reclamation are not "unsuitable" as defined by 40-10-24(4) of the Act. Coal mining and reclamation operations would not adversely affect the publicly owned Scofield State Park or Scofield town buildings placed on the National Register of Historic Places (R645-103-236). A mitigation plan will be developed for the adverse effect on three eligible historic sites within the disturbed area (2008/Incoming/0007.pdf).

The Center for Water Advocacy in their letter received August 18, 2008, requested and informal conference on unsuitability issues. An informal conference is scheduled for September 30, 2008 at the Price Field Office (2008/Outgoing/0007.pdf).

Commenters may file an unsuitability claim under R645-103-237, for the proposed permit area. However, under R645-103-431.600, the Division may decide not to process the part of the pertaining to lands to which an administratively complete permit application has already been received. A petitioner must meet an "injury in fact" test as described by R645-103-421 and provide a description of the impact of the designation (R645-103-422.300 and R645-103-422.800). Petitioners should also keep in mind the criteria for designating land as unsuitable (R645-103-320).

There is one occupied dwelling within 300 feet of the proposed mining operations. Volume 2 exhibit 4 contains a written waiver from Jim Levanger, President of L2H Enterprises Inc. The reference to the information contained in Exhibit 4 is provided for in Volume 1, Chapter 1, page 1-20 Section R645-301-115.300. [JCH]

**Findings:**

The information in the application is not adequate to meet the requirements of this section of the regulations. Prior to approval the following information must be provided in accordance with;

**R645-300-141, 301-114.100**, the reviewer is referred to pages 1-18 and 1-19, R645 301-114.100, (Documentation of Ownership). They include legal descriptions of the Fee surface and Leased surface boundaries. Page 1-20 includes a legal description of the of the permit boundary. The text on pages 1-18 and 1-19 of the application include a reference to lease area and permit area boundary maps 11 and 12. However the maps are not to a scale of 1"=1000' that clearly

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show the boundaries of the lease and permit areas in order to verify the legal description as previously noted in consultation with the applicant. [JCH]

### PERMIT TERM

Regulatory References: 30 CFR 778.17; R645-301-116.

#### Analysis:

The permit term of five years is requested. The applicant has not requested a longer term, but has projected a twenty year life of mine (Section 4.5.2.2). The mining sequence is shown on Map 4.5.1.2-5 for the 452.5 acre permit area. Table 4.5-1 of the application describes the development five entries and mining of 671,863 tons of coal from the Hiawatha seam, using a continuous miner, during the first five year permit term. An annual tonnage rate of 180,000 to 490,000 tons/year (0.18 to 0.49 million tons) of coal for the first permit term is stated in Section 4.5.2.2.

#### Findings:

The information provided meets the requirements for a five-year mining permit.

### PUBLIC NOTICE AND COMMENT

Regulatory References: 30 CFR 778.21; 30 CFR 773.13; R645-300-120; R645-301-117.200.

#### Analysis:

Carbon Resources, LLC provided public notice for the proposed mine on June 24, July 1, 8 and 15, 2008 in the Sun Advocate. In response to the public notice, the Division received one comment from the Center for Water Advocacy (2008/Incoming/0006.pdf). The commenter requested an informal conference. That conference is scheduled for September 30, 2008 at the Price Field Office.

The Governor's Resource Development Coordinating Council also had a public/agency comment period which ended August 22, 2008. The RDCC has not yet provided comments to the Division.



**Findings:**

The information provided by the Applicant has met the requirements for public notification. The Division is attempting to fulfill its requirement to include the public in the permitting process.

**FILING FEE**

Regulatory Reference: 30 CFR 777.17; R645-301-118.

**Analysis:**

This \$5.00 fee was paid with the application (2008/Incoming/0001.pdf).

**Findings:**

The Applicant has met the requirements of the filing fee.

**PERMIT APPLICATION FORMAT AND CONTENTS**

Regulatory Reference: 30 CFR 777.11; R645-301-120.

**Analysis:**

A notarized statement of the mine permit application's veracity and accuracy from Clay Wisdom, the Chief Financial Officer for Carbon Resources, LLC accompanied the application in the cover letter (2008/Incoming/0002.pdf).

**Findings:**

The information provided is in a format prescribed by the Division and meets the requirements of R645-301-121.300. Elsewhere in this technical analysis, the Division makes requests for further information or requests clarification.

**REPORTING OF TECHNICAL DATA**

Regulatory Reference: 30 CFR 777.13; R645-301-130.

**Analysis:**

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Chapter 7, page 7-105, Section 731.120, Mine Water Supply Withdrawals includes a description of CR's plans for constructing a surface mine water storage tank. Chapter 5, Page 5-37, Section 526, Mine Drainage Control and Dewatering, states that "potential mine inflows are expected to be minimal and there will be sufficient storage capacity in both the existing abandoned underground mine workings and in inactive working areas that transfer of mine drainage to the surface water system is unlikely". [JCH]

**Findings:**

The information is adequate to meet the requirements of this section of the regulations.

**COMPLETENESS**

Regulatory Reference: 30 CFR 777.15; R645-301-150.

**Analysis:**

The Kinney #2 Mine plan application was received on February 19, 2008 (2008/Incoming/0002.pdf) with supplemental information received on June 13, 2008 (2008/Incoming/0004.pdf). The mine plan application was determined to be administratively complete on June 24, 2008 (2008/Outgoing/0005.pdf). The Division notified local, state, and federal governing agencies on June 25, 2008 (2008/Outgoing/0006.pdf). Val Payne, John Harja and Mike Mower of the Public Lands Policy Coordination Office (PLPCO) were included in the distribution.

**Findings:**

The Applicant has met the completeness requirements.

**ENVIRONMENTAL RESOURCE INFORMATION**

Regulatory Reference: Pub. L 95-87 Sections 507(b), 508(a), and 516(b); 30 CFR 783., et. al.

**GENERAL**

Regulatory Reference: 30 CFR 783.12; R645-301-411, -301-521, -301-721.

**Analysis:**

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The mine site is located on a sagebrush, grass and aspen vegetated hillside at 7,800 ft. elevation (Map 3.2.1.2-1). State highway 96 runs along the western boundary of the permit area. The town of Scofield is within 1,000 ft of the permit boundary (Map 4.5.1.2-1). Approximately 1,200 ft west, Mud Creek flows past the town of Scofield (Map 3.7.2.1-1) and into Scofield State Recreation area approximately 3,000 ft. north of the proposed permit area (USGS Scofield Utah topographic map and Map 3.4.1.4-1).

There are 17 abandoned mine portals known in the immediate area (Map 3.7.2.1-1), mining the Columbine, the UP and the Hiawatha seams (Map 3.7.2-1 and Map 3.4.1.4-2). The proposed mine will re-affect a site that was reclaimed by the Division in 1986 (AMR\007\904, Scofield project). The pre-mining site condition is illustrated with photographs displayed in Exhibit 1.2-1 and the locations of the photographs are noted on Map 4.5.1.2-4, although the connection between exhibit and map is not noted on the Map or in the Exhibit.

The current and post mining land use is undeveloped rangeland (wildlife) and livestock pasture (grazing). The average annual precipitation is 14.5 inches (Table 3.7.4.2-1), based upon historic data recorded at the Clear Creek and Scofield dam sites (section 3.7.4).

The Regional Land Use map # 4 has been revised to include Scofield Reservoir. The Scofield Lake State Recreation Area location has been removed from Map 11 as it is located a considerable distance to the north of Map 11. Map 12 according to the research noted from Carbon Resources does show the correct location of Scofield Reservoir. The PIT MIN legend does include all of the PIT MIN parcels, see section 27.

Exhibit 1 includes a reference to map #14 for the photo locations and map 14 includes a reference to Exhibit 1.

**Findings:**

The information provided does not meet the requirements of the Rules for general resource information. Prior to approval please correct the following in accordance with:

**R645-301-121.200**, the disturbed area boundary is noted in the legends of Maps 13 and 14. The boundary needs to be accurately and clearly shown on Maps 13 and 14 as depicted in the corresponding legends. [JCH]

**RECOMMENDATIONS:**

The application is not recommended for approval at this time.